



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Isometrics, Inc.
File: B-245095
Date: November 19, 1991

Peter M. Kilcullen, Esq., and Mary Lou Smith, Esq., Kilcullen, Wilson and Kilcullen, for the protester. William H. Gammon, Esq., Moore & Van Allen, for Beta Systems, an interested party. Caroline A. Ford, Esq., and Vera Meza, Esq., Department of the Army, for the agency. Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Hand-carried bid properly was considered for award where record, including time/date stamp, establishes that it was received in proper office 1 day prior to bid opening despite bidder's failure to address bid properly or to mark package as containing a bid.

DECISION

Isometrics, Inc. protests the proposed award of a contract to Beta Systems under invitation for bids (IFB) No. DAAK01-91-B-0176, issued by Army Troop Support Command (TROSCOM) as a total small business set-aside, for 500 liquid storage tanks. Isometrics, the second-low bidder, alleges that Beta's low bid was late and therefore was improperly considered for award.

We deny the protest.

The solicitation specified that bids were to be submitted by 2 p.m. on July 25, 1991. The cover sheet of the solicitation stated that hand-carried bids, which included bids delivered by commercial carriers such as Federal Express, were to be delivered until that time to the depository located in Building 102E of the Small and Disadvantaged Business Utilization (SADBU) office. The cover sheet further stated that mailed bids were to be sent to the following address shown in block 7: "U.S. Army Troop Support Command, AMSTR-ASWM/GI, 4300 Goodfellow Boulevard, St. Louis, MO 63120-1798." The solicitation directed bidders to mark the lower portion of the outer envelope with

the solicitation number and the time and date specified for bid opening.

On July 24, Beta incorrectly sent its bid in a Federal Express envelope addressed to Mr. Byron Lynum, the person identified in the IFB as the contract specialist/bid opening officer, at the location in block 7, rather than to the SADBUs office, designated in the IFB for hand-carried bids. The inner envelope, containing the bid, referenced the SADBUs office, but there was no indication that it contained a bid. A Federal Express receipt for the package indicates that delivery was made to the acquisition mailroom at 9:41 a.m. on July 24. Since the Federal Express mailing envelope containing Beta's bid also did not indicate that it contained a bid or the bid opening time, mailroom personnel included the envelope in the bin with the regular mail for Mr. Lynum's office. Mr. Lynum's secretary picked up the mail, including the bid, at 1:30 p.m. on July 24. She opened both the Federal Express and inner envelopes, removed the bid and stamped it as received, and, at 3 p.m., placed the bid in the "in" box of Mr. Lynum, who was away from his desk.

Bid opening was held at 2 p.m. the following day. After the opening, at 2:50 p.m., Mr. Lynum returned to his office and discovered Beta's bid in his "in" box. After investigating the matter, the agency determined that Mr. Lynum's secretary improperly had failed to recognize the bid, and that it was this failure that prevented it from being included in the 2 p.m. bid opening. The agency thus proposed to make award to Beta as the lowest responsive, responsible bidder. Isometrics challenged that determination in an agency-level protest; after denial of that protest, the firm filed this protest with our Office.

Isometrics maintains that, notwithstanding the agency's position, it was Beta's responsibility to ensure that its bid was addressed to the proper location and that the outer envelope containing its bid was marked as such. Because Beta did not do so, Isometrics concludes, the lateness of Beta's bid was its own fault, not the government's, and the bid therefore should not be considered. In support of its position, Isometrics cites Weathe: Data Servs., Inc., B-238970, June 22, 1990, 90-1 CPD ¶ 582, wherein we held that a hand-carried bid was properly rejected because its late receipt was due to the protester's failure to mark the Federal Express envelope as containing a bid.

Bidders generally are responsible for delivering their bids to the proper place at the proper time, and late delivery of a bid requires its rejection. United Teleplex, B-237160.2, Feb. 2, 1990, 90-1 CPD ¶ 146. A late hand-carried bid may be considered for award, however, where improper government action was the paramount cause of its late delivery and


consideration of the late bid would not compromise the integrity of the competitive bid system. Watson Agency, Inc., B-241072, Dec. 19, 1990, 90-2 CPD ¶ 506.

We find that TROSCOM properly considered Beta's bid. While Isometrics is correct that Beta's failure to follow the IFB's bid submission instructions initially caused a mis-routing of the firm's bid, this was not fatal to the bid's timeliness. Even though Beta's bid was not forwarded through ordinary channels for hand-carried bids, it ultimately was received in the proper office--and, indeed, on the proper government official's desk--at least 1 day prior to bid opening, as established by the time/date stamp on the bid, as well as the agency's account of events. The mislabeling did lead the secretary to place the bid in the "in" box, apparently contrary to established procedures for handling bids, but this merely resulted in Mr. Lynum's not being aware that the bid had been received; it did not alter the fact that the bid was in fact received in Mr. Lynum's office well before bid opening. We consider this fact to be determinative under the circumstances. See generally T&A Painting, Inc., B-233500.2, Apr. 11, 1989, 89-1 CPD ¶ 369.

It is clear that the integrity of the competitive bid system will not be compromised by acceptance of Beta's bid. Since it is undisputed that Beta's bid was exclusively within the agency's control as of 1 day before bid opening, there is no possibility, and Isometrics does not allege otherwise, that the bid was altered after bid opening. See Excel Servs., Inc., B-217184; B-218039, May 8, 1985, 85-1 CPD ¶ 514.

Our holding in Weather Data is not controlling here, since that decision turned on the fact that the misaddressing of the bid prevented its timely receipt at the proper location; as discussed above, Beta's bid ultimately was received at the proper location well before bid opening.

The protest is denied.


James F. Hinchman
General Counsel